

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs August 21, 2007

STATE OF TENNESSEE v. DOROTHEA ANNETTE JONES

Appeal from the Circuit Court for Blount County
No. C-15995; C-15996 D. Kelly Thomas, Jr., Judge

No. E2006-02469-CCA-R3-CD - Filed December 20, 2007

The Appellant, Dorothea Annette Jones, appeals the Blount County Circuit Court's revocation of her probation. Jones entered guilty pleas in the general sessions court to the misdemeanor offenses of possession of a Schedule IV controlled substance, possession of a Schedule II controlled substance, and possession of drug paraphernalia. The court suspended the imposed eleven month and twenty-nine day sentences and placed Jones on supervised probation. The suspended sentences were subsequently revoked by the sessions court, and Jones appealed the revocations to the circuit court. At the circuit level, Jones entered into a consent order admitting to violations of her probation. The order of the circuit court further provided for reinstatement of Jones' probationary status and for extension of her probationary period. The case was then re-docketed in the circuit court, with the circuit court retaining supervision and control of Jones' probation. A second violation warrant against Jones was later filed in the circuit court. A subsequent revocation hearing was held in the circuit court, after which the court revoked the suspended sentences based upon Jones' continued use of cocaine, failure to report, failure to pay costs, and failure to maintain employment. On appeal, Jones asserts that the circuit court erred in revoking her sentences because the evidence was not sufficient to establish that she willfully violated the terms of her probation. Following plain error review, we conclude that the circuit court was without the authority to maintain supervision of, or jurisdiction over, Jones' probationary sentences, as it remained in the general sessions court. Accordingly, we vacate the circuit court's order of revocation and remand to the circuit court.

Tenn. R. App. P. 3; Judgment Vacated and Remanded

DAVID G. HAYES, J., delivered the opinion of the court, in which THOMAS T. WOODALL and ROBERT W. WEDEMEYER, JJ., joined.

J. Liddell Kirk, Knoxville, Tennessee, for the Appellant, Dorothea Annette Jones.

Robert E. Cooper, Jr., Attorney General and Reporter; Lacy Wilber, Assistant Attorney General; and Robert Headrick, Assistant District Attorney General, for the Appellee, State of Tennessee.

OPINION

Procedural History

On May 11, 2004, the Appellant pled guilty in the Blount County General Sessions Court to possession of drug paraphernalia, possession of a Schedule II controlled substance, and possession of a Schedule IV controlled substance. The Appellant received sentences of eleven months and twenty-nine days for each conviction, which were suspended under conditions of supervised probation. In a separate case, which is also included within this appeal, the Appellant pled guilty on September 28, 2004, to a second charge of possession of a Schedule II controlled substance, and received an additional eleven month and twenty-nine day sentence, which was also suspended.

On December 15, 2004, a violation warrant was issued by the general sessions court alleging that the Appellant had failed to report to her probation officer as ordered, had failed to obey the law, and had failed to pay her supervised probation fees. On May 12, 2006, the general sessions court found the Appellant to be in violation of the terms of her probation and entered an order revoking the Appellant's suspended sentences.

On May 17, 2006, the Appellant appealed the revocation rulings to the Blount County Circuit Court. On May 22, the court entered an order which stated that the Appellant admitted to violating the terms of her probation. The order further provided that the Appellant was to serve thirty days in jail and that her suspended sentences would be extended from May 22, 2006, to May 21, 2007. Rather than remanding the case to the general sessions court for enforcement of its ruling and continued supervision of the Appellant, the case was re-docketed in the Blount County Circuit Court.

On October 18, 2006, a violation warrant was filed in the circuit court alleging that the Appellant had violated the terms of her probation by: (1) testing positive for cocaine at her probation appointment on June 14, 2006, and again on August 23, 2006; (2) failing to obtain a drug assessment and enter treatment as ordered; (3) failing to report; and (4) failing to timely pay costs and fees. On November 13, 2006 a hearing was held in the circuit court, at which the Appellant and her probation officer testified.

Carolyn Brewer, the Appellant's probation officer, testified that she was assigned to the Appellant's case following the circuit court's order of May 22, 2006. Brewer testified that she met with the Appellant for the first time on June 14, 2006, at which time the Appellant tested positive for the presence of cocaine. According to Brewer, the Appellant also tested positive for cocaine on another occasion in August. Moreover, the Appellant admitted to Brewer that she used cocaine on multiple occasions while she was on probation. Brewer further testified that the Appellant rarely reported as scheduled, rather she routinely called and rescheduled her appointments for other dates. The forty-two-year-old Appellant also testified and admitted to using cocaine while on probation. According to the Appellant, she used drugs when she could afford them, usually once a week or every two weeks.

After hearing the testimony presented, the circuit court found that the Appellant had violated the terms and conditions of her probation by her continued use of cocaine, testing positive for cocaine on two occasions, failing to report as scheduled in the month of October, failing to pay costs and fees, and by not maintaining regular employment. The court revoked her probation and ordered the Appellant to serve her sentences as originally imposed.

Analysis

On appeal, the Appellant asserts that the circuit court erred in revoking her probation because there was insufficient evidence to establish that the Appellant *willfully* violated the terms of her probation. The State responds that revocation was authorized. Although not raised by either party, we are constrained to note, through application of the plain error doctrine, that the Blount County Circuit Court lacked jurisdiction to supervise the Appellant during the term of her probationary period.

Rule 52(b) of the Tennessee Rules of Criminal Procedure provides that “plain error” is “an error which has affected the substantial rights of an accused,” and, when necessary to do substantial justice, an appellate court may consider such an error “at any time, even though not raised in the motion for a new trial or assigned as error on appeal.” Clearly, the authority of a court to act, based upon a lack of jurisdiction, is an error which affects the substantial rights of any defendant, including the Appellant in this case.

Pursuant to Tennessee Code Annotated section 27-5-108, once an appeal has been perfected to the circuit court, the circuit court is to act as an appellate court and conduct a *de novo* review of the order of the general sessions court. T.C.A. § 27-5-108(d) (2006). The court must try the matter “as if no judgment had previously been rendered[,] . . . [with] consideration of the various sentencing options if there is a finding that the defendant violated the terms and conditions of probation.” *State v. Donnie Moore*, No. W2003-01581-CCA-R3-CD (Tenn. Crim. App. at Jackson, July 12, 2004) (citing *State v. Cunningham*, 972 S.W.2d 16, 18 (Tenn. Crim. App. 1998)). Nonetheless, the circuit court’s role in its review is only that of an appellate court. *See State v. Hartwell*, 124 S.W.3d 629, 631 (Tenn. Crim. App. 2003). After hearing the evidence, the circuit court may affirm, reverse, or modify the general sessions court’s decision. However, following review, the circuit court is to remand the case to the general sessions court for enforcement of its ruling. *See Moore*, No. W2003-01581-CCA-R3-CD.

In this case, the Appellant followed the proper procedure by timely appealing the general sessions court’s May 12, 2006 order of revocation to the Blount County Circuit Court. The record further reflects that an order was entered by the circuit court on May 22, whereby the Appellant admitted to violating the terms of her probation. The order of the circuit court modified the sessions court’s revocation ruling and provided that the Appellant was to serve thirty days in jail and extended her suspended sentences from May 22, 2006 to May 21, 2007. At this point, the proper procedure would have been for the circuit court to remand the case to the general sessions court for enforcement of its order.

While the consent order perhaps intended to confer jurisdiction of the case to the circuit court, parties may not, by agreement, confer jurisdiction upon a court where none otherwise exists. *See State v. Craig S. Cook*, No. M2002-02460-CCA-R3-CD (Tenn. Crim. App. at Nashville, Dec. 9, 2004). In this case, it appears that the circuit court attempted to retain supervision of the Appellant's probationary status following the completion of its appellate function, as evidenced by the filing of an additional violation warrant issued by the circuit court on October 18, 2006. However, the circuit court was without the authority to retain jurisdiction of the case following its appellate ruling. Thus, the October 18, 2006 violation warrant was filed in the wrong court, as jurisdiction of the case remained with the general sessions court, and, as such, the circuit court had no jurisdiction to decide the validity of that violation.

CONCLUSION

Based upon the foregoing, the Blount County Circuit Court's order of November 13, 2006, revoking the Appellant's probation, is vacated, and the case is remanded to the circuit court for further proceedings consistent with this opinion.

DAVID G. HAYES, JUDGE